

REMARKS

Reconsideration and allowance of the present application based on the following remarks are respectfully requested.

Upon entry of the foregoing amendments, claims 27 (withdrawn), 39, 43 and 76-91 will be pending in this application. Claims 39 and 76 are independent. Support for the new claims is found throughout the specification and the previous claims.

Before responding specifically to the Restriction and Election requirement in the Action, it is noted that newly presented claims 76-91 provide a still alternative expression of Applicants' invention. It is believed that claims 76-91 can and should be examined with the elected claims, as discussed below. However, to the extent that the Examiner considers claims 76-91, which are directed to a method for controlling whether a characteristic is displayed in a plant, and which method utilizes an expression system incorporating the generic embodiment of former claim 26, and noting that there has not yet been an examination on the merits in this RCE application, Applicants, if allowed, wish to elect, as between Group I claims 39, 40, 28, 41-45 and 52, and new claims 76-91, the new claims 76-91.

However, as stated previously, since the method set forth in claim 76 incorporates the generic definition of the expression system from former claim 26, which encompasses the subject matters of the embodiments of claims 39-41, all included in the Group I of the current restriction, the newly presented claims are considered to be closely related to the previously presented claims and should be examinable therewith.

Turning to the Action, Applicants have been required to restrict the application to one of the following three groups:

- I. Claims 39, 40, 28, 41-45 and 52; drawn to an expression system comprising recombinases;
- II. Claim 27; drawn to an expression system comprising recombinases; and
- III. Claims 47-50; drawn to isolated plant genomes.

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Applicants elect, with traverse, Group I, claims 39, ~~40~~, ~~28~~, ~~41-45~~ and ~~52~~.

Claim 27, from Group II, is directed to an expression system of any of the independent claims 39, 40, 41, wherein the characteristic produced by the inserted gene can be used to prevent the production of seeds capable of developing into mature plants.

Applicants do not agree that the subject matter of dependent claim 27 is "not related" to the subject matter of Group I for the reason that the expression systems of Group I are

more general. Claim 27 may be a subgenus of Group I but it is certainly related to and examinable with Group I.

Reconsideration of the restriction as to Group II is requested (note, that new claim 86 substantially corresponds to claim 27, but is dependent on new claim 76).

Applicants also respectfully disagree with the restriction between groups I/II and III.

Although claims 47-52 are cancelled, new claims 87-91 are presented and correspond to the Group III claims but dependent on the method according to the new claims 76, 77, 78 or 79, in the alternative. There is no evidence to support the assertion that the Group III genomes (or isolated plant, isolated plant part, isolated plant cell or plant seed) can be made by a method other than the method of claims 76-79.

Accordingly, reconsideration of the restriction requirement is respectfully requested.

Upon the election of Group I, Applicants were further required to elect a species from the groups (A)-(C); a gene from groups (i) and (ii), and depending on this election, one of the genes (a) or (b), or one of the genes (aa), (bb) or (cc).

Accordingly, in full compliance with the requirement, Applicants elect (A)(ii)(cc). The elected subject matter relates to an expression system comprising FLP recombinase, in combination with a gene encoding an inhibitor where the gene is under the control of an inducible promoter of the *AlcA* gene.

As stated above, it is believed that the pending claims should and can be examined in this application. Applicants reserve the right to re-present or re-file, in this, or a continuing application, the subject matter of any non-elected and withdrawn subject matter or any other disclosed but unclaimed subject matter.

In view of the foregoing, the claims are now believed to be in form for allowance, and such action is hereby solicited. If any point remains in issue which the Examiner feels may be best resolved through a personal or telephone interview, please contact the undersigned at the telephone number listed below.

Respectfully submitted,

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